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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

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10 EUGENIA ARCE-ALANDIA,) Docket #: 08-Civ.1838 JCM/LRL
11 Individually and on behalf of a)
11 class of all similarly situated)
12 persons,)
12 Plaintiffs,)
13 v.)
13)
14 FOUR SEASONS LAS VEGAS)
14 EMPLOYMENT, INC. d/b/a FOUR)
15 SEASONS HOTEL, MANDALAY CORP.)
15 d/b/a MANDALAY BAY RESORT AND)
16 CASINO, MGM-MIRAGE and its)
16 subsidiary corporations,)
17 BELLAGIO LLC, MIRAGE CORP., MGM)
17 GRAND CORP., and "John Doe)
18 Corporations" 1 to 50, name)
18 fictitious, actual name and)
19 number unknown, individually)
19 and as a class of similarly)
situated defendants,

20 Defendants.
21 -----X
22

23 Now comes Plaintiffs, for themselves and all others
24 similarly situated, and allege the following as and for a First
25 Amended Complaint upon personal knowledge as to themselves and
26 their own acts, and upon information and belief as to all other
27 matters:
28

1 PARTIES AND PRELIMINARY STATEMENT
2

3 1. The plaintiff Eugenia Arce-Alandia is a resident of
4 Clark County, Nevada, and current employee of the defendants
5 FOUR SEASONS LAS VEGAS EMPLOYMENT, INC. which does business as
6 the Four Seasons and MANDALAY CORP. which does business as the
7 Mandalay Bay Resort and Casino ("Mandalay"). Such plaintiff has
8 also, within the three years immediately preceding the
9 commencement of this action, been an employee of defendant MGM-
10 Mirage either directly or through its wholly owned subsidiaries,
11 including those that own and/or operate the Las Vegas Casino
12 properties operating under the names MGM Grand Las Vegas, The
13 Mirage, and Bellagio, such subsidiaries being identified herein
14 as BELLAGIO LLC, MIRAGE CORP. and MGM GRAND CORP., the exact
15 legal names of such subsidiaries not being currently known to
16 the plaintiff but such exact and proper legal names will be
17 substituted for such defendants in an amended pleading when the
plaintiff is able to properly identify the same.

18 2. The defendants "John Doe Corporations" 1 to 50 are
19 named fictitiously and their exact legal names and the
20 number of such defendants are unknown (the "John Doe
21 Defendants"). Such defendants are the legal entities that
22 operate major hotel and casino properties in Clark County,
23 Nevada, primarily in the unincorporated portion of Clark County
24 Nevada commonly known as "The Strip", that section of Las Vegas
25 Boulevard stretching from Sahara Avenue to Russell Road. Such
26 casino properties, upon information and belief, are operated by
27 a variety of individual and related subsidiary corporations that
28 are in turn primarily owned and controlled by two large

corporations, Harrah's Entertainment Inc. and MGM Mirage, and a number of other smaller entities, including Wynn Resorts Limited, Las Vegas Sands Corp., Colony Capital LLC, Columbia Sussex Corporation, and other entities. The particular casino properties at issue may include the Luxor, Excalibur, Tropicana, MGM, New York-New York, Monte Carlo, Planet Hollywood, Bellagio, Ballys, Paris, Flamingo, Caesars Palace, Mirage, Venetian, Treasure Island, Wynn, Riviera, Sahara, Circus Circus, Stratosphere, Golden Nugget, Rio, Orleans, Las Vegas Hilton, Green Valley Ranch Station, Red Rock Station, Rampart and others.

12 3. The defendant Mandalay is a corporation existing and
13 established pursuant to the laws of the State of Nevada with
14 their principal place of business in the County of Clark, State
15 of Nevada.

16 4. The acts complained of herein took place solely, or
17 primarily, in Clark County Nevada.

THE PROPOSED CLASS CLAIMS AND PARTIES

19 5. There are numerous persons who are similarly situated
20 to the named plaintiff in respect to the named plaintiff's
21 claims under Nevada Law, in that such similarly situated
22 persons, like the named plaintiff (such similarly situated
23 persons and the named plaintiff being referred to, collectively,
24 as "plaintiffs"), performed substantial work, labor and services
25 for the defendants and did not receive the overtime compensation
26 required by Nevada law, to the extent Nevada law requires
27 overtime compensation be paid based upon a "regular hourly rate"
28 that includes all weekly compensation actually paid as alleged

1 in paragraph 20 herein, or, alternatively, based upon only the
2 "hourly rate" of compensation paid as alleged in paragraph 21,
3 herein, and as detailed hereafter such circumstances warrant the
4 granting of class certification on such claims of the plaintiffs
5 pursuant to N.R.C.P. Rule 23.

6 6. That the persons similarly situated to the named
7 plaintiffs and described in paragraph 5 constitute a class of
8 persons that are so numerous that joinder of all such persons
9 individually is impractical, such class consisting of all casino
10 banquet servers who, as more fully described herein, since July
11 1, 2005, have not been paid overtime wages as alleged in
12 paragraph 20 herein to be required by N.R.S. § 608.018 and upon
13 information and belief such class members exceed 500.

14 7. There are questions of law and fact common to the
15 plaintiff class that predominates over any questions affecting
16 only individual members of the plaintiff class, specifically
17 whether the defendants have any legal obligation to pay the
18 class members overtime under Nevada Law because Nevada law
19 requires the payment of overtime compensation based upon a
20 regular hourly rate that includes all compensation paid to an
21 employee during a one week period as alleged in paragraph 20 or
22 on the alternative basis alleged in paragraph 21 herein and if
23 so what is the extent of such obligation.

24 8. The claims of the named plaintiff are typical of the
25 claims of the above described plaintiff class, in that the
26 interests of the named plaintiff is co-extensive with the
27 interests of the other members of the plaintiff class, there is
28 a lack of adverse interests between the named plaintiff and the

1 other members of the plaintiff class, and common questions of
2 law and fact exist as to the claims of the named plaintiff and
3 the claims of the members of the plaintiff class.

4 9. The named plaintiff will fairly and adequately protect
5 the interests of the plaintiff class and serve as an adequate
6 representative plaintiff on behalf of the plaintiff class and
7 has retained experienced counsel that are qualified to represent
8 the plaintiff class.

9 10. The members of the plaintiff class labor for a
10 variety of different legal entities but are all exposed to, and
11 injured by, the identical employment practice set forth in this
12 complaint in respect to a failure to pay overtime wages if it is
13 determined that Nevada Law requires the payment of overtime
14 wages based upon a regular hourly rate that includes all
15 compensation paid to an employee during a one week period as
16 alleged herein in paragraph 20 or on the alternative basis
17 alleged in paragraph 21. The members of the plaintiff class are
18 deterred from enforcing their rights under N.R.S. § 608.018
19 because any attempt to do so would be overwhelmingly likely to
20 result in the termination or restriction of their employment and
21 result in them being unable to support themselves and their
22 families. As a result of such circumstance, the proposed class
23 of "John Doe" defendants should also be certified in this case,
24 subject to further and proper identification of the same in the
25 future, so that complete justice can be rendered to all class
26 members and the compelling public purpose behind N.R.S. §
27 608.018 vindicated.

28 11. Certification of the proposed "John Doe" class of

1 defendants is also proper because the named defendant's
2 interests are identical to those of the proposed members of the
3 defendant class and there are no adverse interests between such
4 named defendant and the proposed defendant class members; the
5 named defendant will adequately represent the interests of the
6 members of the defendant class; and common questions of law and
7 fact exist and predominate as to the claims and defenses of the
8 named defendant and the claims and defenses of the members of
9 the proposed class of defendants rendering it desirable and
10 efficient to resolve such claims and defenses of the defendant
11 class members on a class action basis.

12. A class action of plaintiffs, and defendants,
13 pursuant to N.R.C.P. Rule 23 is superior to other available
14 methods for the fair and efficient adjudication of the plaintiff
15 class members' claims under Nevada Law.

16
17 AS AND FOR A CLAIM FOR RELIEF ON BEHALF
18 OF PLAINTIFFS UNDER N.R.S. § 608.018
N.R.S. § 30.040 AND N.R.S. § 30.100
19

20. The plaintiffs bring this Claim for Relief against the
21 defendants under NRS § 608.018 for unpaid overtime wages. The
22 plaintiffs seek damages directly under the foregoing statute and
23 also seek declaratory relief from this Court under N.R.S. §
24 30.040 and appropriate supplemental relief to such declaratory
relief under N.R.S. § 30.100.

25. Commencing July 1, 2005, NRS § 608.018(2) required
26 that the plaintiffs receive overtime pay at one and one-half
27 times their regular wage rate for all hours worked in excess of
28 40 hours per week.

1 15. One of the major purposes of overtime laws, as
2 exemplified in NRS § 608.018(2), is to encourage employers to
3 not work individual employees excessively long hours and to
4 foster full employment and the betterment of society at large
5 and the economy by encouraging employers to hire more employees
6 rather than incur the additional costs of working fewer
7 employees longer hours.

8 16. Defendants have either required or allowed the
9 plaintiffs to work in excess of 40 hours per week without the
10 payment of overtime wages.

11 17. The plaintiffs are not subject to any of the
12 exemptions from the overtime pay requirements of NRS § 608.018.

13 18. The plaintiffs are compensated based upon a "flat
14 hourly" rate, which is paid in full for each hour worked, or in
15 a pro-rata partial amount for partial hours that are worked,
16 each week, plus a "per job" gratuity service charge which is
17 akin to a piecework or commission payment for each job that they
18 complete.

19 19. The plaintiffs perform no sales activities and sell
20 no products or services, the services that they provide (banquet
21 or catering services) are already sold, and negotiated and paid
22 for (or payment promised for) between the defendants and their
23 customers, or such services have been ordered by the defendant
24 with the defendant itself paying for them, prior to the
25 plaintiffs performing any work.

26 20. The plaintiffs assert that N.R.S. § 608.018 requires
27 the payment of overtime pay at one and one-half times their
28 "regular hourly rate" of pay for each hour of work that exceeds

1 40 hours in a week and that such "regular hourly rate" must, as
2 a matter of Nevada law, be determined by taking the entire
3 compensation actually paid each week to the plaintiffs (both
4 "flat hourly" and "per job" gratuity service charges) by the
5 defendants and dividing the resulting total of each plaintiff's
6 weekly compensation by the number of hours that plaintiff worked
7 in that week, the plaintiffs further claiming that Nevada law
8 mandates this method of "regular hourly rate" determination for
9 overtime purpose under N.R.S. § 608.018 for all employees even
10 if the parties, pursuant to an employment contract or collective
11 bargaining agreement, have specified a different means of
12 calculating the "regular hourly rate" that would result in the
13 payment of a lesser amount, or no amount, of overtime wages.

14 21. Plaintiffs seek payment of overtime based upon Nevada
15 law requiring the form of "regular hourly rate" determination
16 for overtime purposes under N.R.S. § 608.018 specified in
17 paragraph 20 or, in the alternative, based upon receiving time
18 and one-half for all hours worked in excess of 40 hours per week
19 based on whatever compensation is actually paid to the
20 plaintiffs "by the hour" and excluding for overtime calculation
21 purposes all other commission compensation, piecework
22 compensation or other compensation that is agreed to be paid or
23 actually paid to the plaintiffs on any basis besides "by the
24 hour".

25 22. The conduct of the defendants, in failing to pay the
26 plaintiffs the foregoing overtime compensation required by NRS
27 § 608.018, has caused the plaintiffs to incur damages in the
28 form of the loss of the overtime pay owed to them as aforesaid.

1 23. The conduct of the defendants, in failing to pay the
2 plaintiffs the foregoing overtime compensation required by NRS §
3 608.018, gives rise to a right by the plaintiffs to seek a
4 declaration of their rights under such statute and a
5 determination that the defendants have violated such statute and
6 abridged the rights of the plaintiffs as per N.R.S. § 30.040,
7 and upon being granted such declaratory relief the plaintiffs
8 seek appropriate supplemental relief as provided for under
9 N.R.S. § 30.100.

10 24. The named plaintiff on behalf of themselves and the
11 proposed plaintiff class members seeks a judgment against
12 defendants for the unpaid overtime compensation owed to the
13 plaintiffs, along with appropriate declaratory relief pursuant
14 to N.R.S. § 30.040 determining the rights of the parties and the
15 illegality and/or inappropriateness of the defendants' conduct
16 as being in violation of N.R.S. § 608.018 along with appropriate
17 supplemental relief under N.R.S. § 30.100 to remedy the injuries
18 that the plaintiffs have sustained as a result of such violation
19 of their statutory rights, along with an award of attorney's
20 fees, interest and costs, as provided for by Nevada Law.

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24 **PRAYER FOR RELIEF**

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27 WHEREFORE, the plaintiffs demand judgment against
28 defendants as hereinafter set forth, including, *inter alia*:

- 1 (a) Declare this action to be maintainable as a class
2 action on behalf of the proposed class of plaintiffs as
3 per N.R.C.P. § 23;
- 4
5 (b) Declare this action to be maintainable as a class
6 action against the proposed class of defendants as per
7 N.R.C.P. § 23;
- 8
9 (c) Determine the unpaid overtime wages sustained by the
10 class members as a result of defendants' violations of
11 NRS § 608.018 as is required by Nevada law and as
12 alleged under one of the methods specified in
13 paragraphs 20 or 21 and award those unpaid overtime
14 wages and interest on such overtime wages against the
15 defendants and in favor of the plaintiffs;
- 16
17 (d) Grant plaintiffs suitable declaratory and supplemental
18 relief pursuant to N.R.S. § 30.100 and § 30.040;
- 19
20 (e) Award Plaintiffs and Plaintiff class members their
21 costs and disbursements of this suit, including without
22 limitation, reasonable attorneys', accountants' and
23 experts' fees;
- 24
25
26 (f) Grant Plaintiff and the Plaintiff class members such
27 other and further relief as the Court may deem just and
28 proper.

1 Plaintiff further demands a trial by jury on all issues
2 so triable.

3 Dated: January 8, 2009

4

5 Submitted by the attorneys for the
6 Plaintiffs
7 Leon Greenberg Professional Corporation

8

/s/

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By:_____

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